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September 29, 2014

Jeff S. Jordan
Supervisory Attorney
Complaints Examination & Legal Administration
Federal Election Commission
999 E Street, NW
Washington, DC 20463
VIA FACSIMILE: (202) 219-3923

Re: MUR 6860 – Response to Complaint from Terri Lynn Land and
Terri Lynn Land for Senate

Dear Mr. Jordan:

We are writing this letter on behalf of our clients, Terri Lynn Land ("Land"), Terri Lynn Land for Senate (the "Committee"), and Kathy Vosburg in her official capacity as Treasurer, in response to the Complaint filed by the Michigan Democratic Party ("Complainant") alleging Land and the Committee violated the Federal Election Campaign Act of 1971, as amended ("FECA" or "Act"), and Federal Election Commission ("Commission") regulations by making and accepting excessive contributions. The Complaint is based purely on conjecture and unsubstantiated worst-case assumptions, and should be immediately dismissed.

I. Background

The Complaint alleges that Land does not have sufficient "personal funds" to cover the contributions she has made to the Committee. The Complaint's basis for this assertion is Land's Senate Personal Financial Disclosure ("PFD") Reports, including the 2013 PFD report filed on August 2, 2013, and amended on July 24, 2014, and the 2014 PFD report filed on May 15, 2014, and amended on July 24, 2014 (which Complainant failed to notice).¹ Land and her spouse have

¹ Candidates are required to file a Senate PFD Report within 30 days after becoming a candidate, or by May 14 of that calendar year, whichever is later, and on or before May 15 of each succeeding year an individual remains a candidate. The reported value of assets and liabilities must be within 31 days (before or after) the close of the reporting period. Candidates must disclose financial information concerning their spouse and dependent children. The financial interests are generally reported by category of amount, i.e., None (or less than \$1,001), \$15,000 to

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significant assets, and both receive income in the form of salaries, distributions, rent, and capital gains. While the majority of the assets are held separately, Land jointly owns a real estate management company, Green Light Management, LLC ("Green Light") with her adult son that owns an apartment complex, and Land and Hibma maintain a joint bank account at Chemical Bank.

Since August 2013, Land has made seven contributions to the Committee in amounts ranging from \$50,000 to \$1.2 million dollars. The majority of these funds were derived from jointly owned assets that Land enjoys right of access to and in which she has legal and rightful title or an equitable interest. With respect to the contributions dated December 31, 2013 in the amount of \$600,000 and March 31, 2014 in the amount of \$100,000, Land has previously *sua sponte* brought the source of those funds to the Commission's attention (P-MUR 577) and is currently awaiting the Commission's requested expedited guidance. Thus, the following is in response to the remaining five (5) contributions made by Land.

II. Legal Analysis

Candidates may make unlimited expenditures from their own personal funds to finance their own campaigns.² FEC regulations provide that the personal funds of a candidate include assets that, under State law, the candidate had legal right of access to or control over at the time he or she became a candidate, and with respect to which the candidate had (1) legal and rightful title; or (2) an equitable interest.³ The regulations further provide that with respect to assets jointly owned by the candidate and his or her spouse, the portion of the assets that is equal to the candidate's share of the asset under the instrument of conveyance or ownership constitutes the candidate's personal funds. If no specific share is indicated by an instrument of conveyance or ownership, the candidate's portion equals one-half the value of the property.⁴

A. Draw from Green Light Management, LLC

The source of \$750,000 contribution made on September 30, 2013 was a draw from Green Light in the amount of \$744,000, and \$6,000 of Land's personal funds maintained in her personal bank account at Chase Bank.⁵ Exhibit 1 reflects a "Transfer from CHK...3547" in the amount of \$744,000. Account 3547 is the Green Light Management LLC account at Chase Bank. The funds were transferred to "Premier Plus Ckg (...8173)" which is Terri Lynn Land's personal account at Chase Bank.

Green Light is a real estate management company that Land has been a part owner of since 2011, long before she became a candidate for the U.S. Senate. Land maintains a 51%

\$50,000, \$50,000 to \$100,000, and so forth. The "value" of an asset means a good faith estimate of the dollar value if the exact value is not known or easily obtainable.

² 11 C.F.R. § 110.10.

³ 11 C.F.R. 100.33(a).

⁴ 11 C.F.R. § 100.33(c).

⁵ See Exhibit 1.

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ownership interest in Green Light. As reflected on Land's 2014 amended PFD, the value of her ownership interest in Green Light was reported as being between \$500,000 and \$1,000,000. Land also reported receiving income of \$100,000 to \$1,000,000 during the relevant reporting period, which would include the date she received the draw.

As a majority owner, Land has legal right of access to and an equitable interest in Green Light. The draw Land received represented income due her, as well as a partial repayment of funds used to capitalize the company. The \$744,000 draw is consistent with her ownership interest in Green Light, and the amount of income reported on her PFD statement. Thus, the \$750,000 represented Land's personal funds of which she can contribute an unlimited amount.

B. Contributions Made from Joint Checking Account

Land made four contributions that were derived from a joint bank account Land shares with her husband, Dan Hibma at Chemical Bank.⁶ The contributions were made on the following dates:

- August 13, 2013: \$50,000
- September 31, 2013: \$100,000
- September 30, 2013: \$100,000
- June 30, 2014: \$1,200,000⁷

The value of the joint bank account was reported as being between \$50,000 and \$100,000 on Land's amended 2013 and 2014 PFD. However, that value represents only a snapshot of the account as of March 31, 2014, and as with any checking account, the available amount of funds may fluctuate daily.

Land and Hibma have maintained the Chemical Bank joint checking account since 1990, and both deposit funds into the account on a regular basis. The sources of the funds in the account are derived from income received by both Land and Hibma in the form of salaries and distributions.

Under Michigan law, both Land and Hibma have access and control over all funds deposited into the joint account. Specifically, Section 487.703 of the Michigan Compiled Laws states:

When a deposit has been made, or shall hereafter be made, in any banking institution transacting business in this state, in the name of 2 or more persons, payable to either or the survivor or survivors, such deposit or any part thereof or any interest or dividend thereon and any additions thereto, made by any 1 of the

⁶ See Exhibits 2-6. The Chemical Bank account was inadvertently omitted from Land's 2013 and 2014 PFD reports. The reports have been amended to reflect the value of the joint account at the close of the relevant reporting period.

⁷ Land wired \$1,300,000 from the Chemical Bank joint account to her personal checking account at Chase Bank on June 30, 2014. On the same day, Land wrote a check to the Committee for \$1,200,000 (see Exhibits 5 and 6).

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said persons, shall become the property of such persons as joint tenants, and the same shall be held for the exclusive use of the persons so named and may be paid to any 1 of said persons during the lifetime of said persons or to the survivor or survivors after the death of 1 of them, and such payment and the receipt or acquittance of the same to whom such payment is made shall be a valid and sufficient release and discharge to said banking institution for all payments made on account of such deposits prior to the receipt by said bank of notice in writing not to pay such deposit in accordance with the terms thereof.⁸

Thus, under Michigan law, either Land or Hibma may withdraw 100% of the funds at any time without the consent of the other. Stated differently, under Michigan law, 100% of the funds in the Chemical Bank account constitute Land's personal funds.

Commission regulations do not specifically address joint bank accounts. However, the Commission has previously concluded that "bank accounts are an exception to the one-half interest rule" and that "it is presumed that all funds in the joint account are the candidate's 'personal funds.'"⁹ The one-half interest rule does not apply "if state law gives each party access to and control over the whole. Such state law has essentially served as the 'instrument of conveyance or ownership' under 11 C.F.R. § 100.33(e)(1), permitting candidates to contribute up to 100 percent of the funds held in a jointly held bank account with their spouse."¹⁰

This has long been the position of the Commission. For example, in a matter from the 1984 election cycle, MUR 2292 (Stein), the Commission concluded that loans derived from joint securities and banking accounts held by the candidate and his spouse constituted the personal funds of the candidate because the state law in the matter established joint tenancy in the case of joint deposits in banking and securities accounts. Similarly, in a matter from the 1994 cycle, MUR 3505 (Klink), the Commission concluded that loans derived from a joint bank account held by the candidate and his spouse constituted the personal funds of the candidate, pursuant to state law. And in an audit from the 1994 election cycle, LRA 490 (Citizens for Jack Metcalf), the Commission approved the Office of General Counsel's analysis that loans from a candidate's personal joint bank account maintained with his spouse were considered the candidate's personal fund and were not subject to the contributions limits of the Act, stating "[J]oint bank accounts are unique in the law and consequently are viewed differently from other jointly held property for purposes of personal funds analysis under the Commission's regulations."¹¹

More recently, in a Commission audit from the 2006 election cycle, Friends for Menor, the Commission found that the contribution limits of the Act and Commission regulations did not

⁸ MCL 487.703. See *Negaunee Nat. Bank v. Le Beau*, 195 Mich. 502, 508, 161 N.W. 974, 975 (1917).

⁹ MUR 3505 (Klink), General Counsel's Report at 23 (concluding that loans from a joint bank account held by the candidate and his spouse constituted the candidate's personal funds).

¹⁰ Addendum to Legal Analysis on Proposed Interim Audit Report on Friends for Menor (LRA 732)—Contributions from Personal Funds in Jointly Held Bank Accounts dated Jul. 2, 2008 at 1-2 (stating this interpretation is consistent with OGC's analysis in the Bauer for President Audit (LRA 543), MUR 3505 (Klink) and MUR 2292 (Stein).

¹¹ See Proposed Final Audit Report on Citizens for Jack Metcalf (LRA #490) at 4.

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apply to a \$9,000 loan from a candidate's spouse. In that case, the source of the funds were from the sale of stock belonging solely to the candidate's spouse that were deposited into a joint personal bank account of the candidate and the spouse after the campaign had started.¹² As stated in Finding 2 of the Final Audit Report:

FFM [Friends for Menor] reported a \$9,000 loan from the Candidate. The source of the funds was a \$10,000 check drawn on a trust and made payable to the Candidate's spouse. The \$10,000 check was deposited into the joint checking account of the Candidate and his spouse. On the same day a \$9,000 check was issued payable to FFM and signed by the Candidate's spouse. The memo line of this check identified the purpose as a loan to FFM. The balance in the joint personal account on the day prior to the deposit of \$10,000 was not sufficient to allow for the transfer of \$9,000 to FFM.¹³

The Audit staff concluded that FFM received an excessive contribution from the Candidate's spouse. A majority of the Commission, however, disagreed. The Commission's Conclusion in the Final Audit Report states:

The Commission considered the extent to which the contribution limits of 2 U.S.C. 441a(a)(1)(A) and 11 CFR § 110.1(a) and (b) applies to the loan from the funds of the Candidate's spouse that had first been deposited into a joint account of the spouse and the Candidate. The Commission determined that the contribution limits of the Act and Regulations did not apply to this loan.¹⁴

In the Menor audit, the original source of the funds was not the candidate's, but because the funds were deposited into the joint bank account, the candidate, under Hawaii law, had access and control over 100 percent of the funds in the joint account thus making them the candidate's personal funds. Indeed, the Office of General Counsel specifically withdrew its recommendation to the Audit Division "to analyze the \$9,000 loan as a possible contribution by the candidate using his spouse's assets," stating that "[I]f the candidate intended to make the contribution, he could have permissibly done so using all \$11,302 in the joint personal account."¹⁵

As in the Menor audit and other precedent described above, Land has "legal right of access to or control over" and "an equitable interest" in all funds deposited into the joint bank

¹² Ron Menor filed his Statement of Candidacy on May 23, 2006. The source of the funds was a check dated July 30, 2006 that was drawn on a revocable trust bank account. The payment was made to the Candidate's spouse in order to buy out her interest in stock earnings in an entity called Market City. See Committee's Response to Interim Audit Report of the Audit Division dated Apr. 9, 2009 at 4.

¹³ Friends for Menor Final Audit Report, Finding 2, at 8.

¹⁴ Friends for Menor Final Audit Report, Finding 2 at 8. See Certification dated Oct. 22, 2010 (Commissioners Hunter, McGahn II, Petersen and Walther voted affirmatively for the decision. Commissioners Bauerly and Weintraub dissented.).

¹⁵ Addendum to Legal Analysis on Proposed Interim Audit Report on Friends for Menor (LRA 732)—Contributions from Personal Funds in Jointly Held Bank Accounts dated Jul. 2, 2008 at 2.

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account.¹⁶ As such, all the funds in the joint bank account are deemed Land's personal funds, and Land was permitted to make a contribution to the Committee using those funds.

III. Conclusion

Such a politically motivated, speculative Complaint should not provide the basis to find "reason to believe" Land violated the Act. The Commission may find "reason to believe" only if a complainant sets forth sufficient specific facts, which, if proven true, would constitute a violation of FECA. *See* MUR 4960 (Hillary Clinton), Statement of Reasons of Commissioners Mason, Sandstrom, Smith and Thomas (Dec. 21, 2001). Unwarranted legal conclusions from asserted facts or mere speculation will not be accepted as true, and the Commission will dismiss a complaint if it consists of factual allegations that are refuted with sufficiently compelling evidence. *Id.*

On its face, the Michigan Democratic Party's Complaint in this matter is asking for an open-ended fishing expedition of Land's and her husband's financial resources based simply on worst-case speculation drawn from Land's PFD reports—reports which are a snap shot in time of a candidate's assets, and therefore not directly relevant to compliance with the Act. Consequently, we respectfully request that the Commission recognize the facial legal and factual insufficiency of the complaint and immediately dismiss it.

Thank you for your consideration of this matter, and please do not hesitate to contact me directly at (202) 572-8663 with any questions.

Respectfully submitted,



Elizabeth Beacham White
Counsel to Terri Lynn Land, Terri Lynn Land for
Senate, and Kathy Vosburg in her official capacity
as Treasurer

Enc.

¹⁶ See Memorandum to Robert J. Costa Proposed Final Audit Report on Citizens for Jack Metcalf (LRA #490) at 4.

CLARK HILL

9/25/2014

Chase Online -

Chase Online

Thursday, September 25, 2014

Search Results PREMIER PLUS CKG (..

Transaction type: Account Transfer
Amount range: \$744000 - \$744000

Search Results 1 - 1

Date	Type	Description	Debit	Credit
09/27/2013	Account Transfer	Online Transfer from CHK transaction#: 3503122497		\$744,000.00

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TERRILAND
DAN HESMA

74-1001/704

3476

8-13-13

UNRECORDED

DATE

Top 1/2 to Senate

\$ 50,000.00

TIME

10:00 AM

DATE OF REC



CHEMICAL BANK

MEMO

[Handwritten signature]

TERRI LAND
DAN HIBMA

7-100/70

3499

BYRON CENTER, MI 49315

Sept 12 2013

Terri Land & Dan Hibma
Check # 100,000.00



CHEMICAL BANK.

ChemicalBankMI.com

3000

[Signature]

TERRI LAND
DAN HIBMA

10-100/714

3500

BYRON CENTER, ME 05914

Sept 29 2013

[Signature] \$ 100,000.00



CHEMICAL BANK.
ChemicalBankAll.com

PHIM

[Signature]

<p>Terri Lynn Land</p> <p>CASH ON HAND</p> <p>110</p> <p>AMOUNT</p> <p>ONE MILLION TWO HUNDRED THOUSAND AND 00/100 DOLLARS</p> <p>Terri Lynn Land For Cash</p> <p>PO Box 308</p> <p>Grandville, MI 49418</p> <p>06/30/14 \$1,200,000.00</p>	<p>#1</p> <p>Posting Date: 20140708</p> <p>Sequence Number: 6890000008</p> <p>Amount: \$1,200,000.00</p> <p>Account:</p> <p>Routing Transit Number:</p> <p>Check/Serial Number: 000000000110</p> <p>Bank Number: 21</p> <p>IRD Indicator: 0</p> <p>BOFD: 000000000</p> <p>Capture Source: PV</p> <p>Entry Number: 0000008345</p> <p>UDK: 2114070800680000008</p> <p>Cost Center:</p> <p>Teller Number:</p> <p>Teller Sequence Number:</p> <p>Missing Image: 5</p> <p>PE Indicator: N</p> <p>Application Code: 1</p> <p>Trancode: 000000</p> <p>DB/CR: CB</p> <p>Item Type: P</p> <p>Processing Date:</p>
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9/28/2014

Chase Online -

Chase Online

Thursday, September 25, 2014

Search Results PREMIER PLUS CKG (.)

Transaction type: Incoming Wire Transfer
Amount range: \$1300000 - \$1300000

Search Results 1 - 1

Date	Type	Description	Debit	Credit
09/30/2014	Incoming Wire Transfer	FEDWIRE CREDIT VIA: CHEMICAL BANK/ B/O: TERRI LAND BYRON CENTER, MI 49315 REF: CHASE NYC/CTR/BNF=TERRI LAND BYRON CENTER, MI 4 RFB=Q/B CHEMICAL MID IMAU: 0830QMGFT000000000 TRN: 4062709181FF		\$1,300,000.00

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